

TITLE III—AMERICAN SEAMEN

SEC. 301. MANNING AND WAGE SCALES; SUBSIDY CONTRACTS (46 App. U.S.C. 1131 (2002)).

(a) **Investigation of Wages and Working Conditions; Establishment of Wage and Manning Scales; Incorporation in Subsidy Contracts.** The Secretary of Transportation is authorized and directed to investigate the employment and wage conditions in ocean-going shipping and, after making such investigation and after appropriate hearings, to incorporate in the contracts authorized under Titles VI and VII of this Act minimum manning scales and minimum wage scales, and minimum working conditions for all officers and crews employed on all types of vessels receiving an operating-differential subsidy. After such minimum manning and wage scales, and working conditions shall have been adopted by the Secretary of Transportation, no change shall be made therein by the Secretary of Transportation except upon public notice of the hearing to be had, and a hearing by the Secretary of Transportation of all interested parties, under such rules as the Secretary of Transportation shall prescribe. The duly elected representatives of the organizations certified as the proper collective bargaining agencies shall have the right to represent the employees who are members of their organizations at any such hearings. Every contractor receiving an operating-differential subsidy shall post and keep posted in a conspicuous place on each such vessel operated by such contractor a printed copy of the minimum manning and wage scales, and working conditions prescribed by his contract and applicable to such vessel: Provided, however, That any increase in the operating expenses of the subsidized vessel occasioned by any change in the wage or manning scales or working conditions as provided in this section shall be added to the operating-differential subsidy previously authorized for the vessel.

(b) **Subsidy Contracts; Provisions Relative to Officers and Crew.** Every contract executed under authority of Titles VI and VII of this Act shall require—

(1) Insofar as is practicable, officers' living quarters shall be kept separate and apart from those furnished for members of the crew;

(2) Licensed officers and unlicensed members of the crew shall be entitled to make complaints or recommendations to the Secretary of Transportation providing they file such complaint or recommendation directly with the Secretary of Transportation, or with their immediate superior officer who shall be required to forward such complaint or recommendation with his remarks to the Secretary of Transportation, or with the authorized representatives of the respective collective bargaining agencies;

(3) Licensed officers who are members of the United States Naval Reserve shall wear on their uniforms such special distinguishing insignia as may be approved by the Secretary of the Navy; officers being those men serving under licenses issued by the Bureau of Marine Inspection and Navigation;

(4) The uniform stripes, decoration, or other insignia shall be of gold braid or woven gold or silver material, to be worn by officers, and no member of the ship's crew other than licensed officers shall be allowed to wear any uniform with such officer's identifying insignia;

(5) ~~No discrimination shall be contracts authorized under Titles VI and VII of this Act~~ minimum manning scales and minimum wage scales, and minimum working conditions for all officers and crews employed on all types of vessels receiving an operating-differential subsidy. After such minimum manning and wage scales, and working conditions shall have been adopted by the Secretary of Transportation, no change shall be made therein by the Secretary of Transportation except upon public notice of the hearing to be had. ~~and a hearing by that officer~~ benefits substantially equivalent to the rights and benefits provided for by chapter 43 of title 38, United States Code, for any member of a Reserve component of the Armed Forces of the United States who is ordered to active duty.

(b) An individual may submit an application for certification under subsection (c) to the Secretary of Transportation not later than 45 days after the date the individual completes a period of employment described in subsection (c)(1)(A) with respect to which the application is submitted.

(c) Not later than 20 days after the date the Secretary of Transportation receives from an individual an application for certification under this subsection, the Secretary shall—

(1) determine whether or not the individual—

(A) was employed in the activation or operation of a vessel—

(i) in the National Defense Reserve Fleet maintained under section 11 of the Merchant Ship Sales Act of 1946, in a period in which that vessel was in use or being activated for use under subsection (b) of that section;

(ii) that is requisitioned or purchased under section 902 of this Act; or

¹⁰ Section 302 was added by Section 10(a) of Public Law 104-239, approved October 8, 1996 (110 STAT. 3133), the Maritime Security Act of 1996. Section 10(b) provides: "(b) **Application.**—The amendment made by subsection (a) shall apply to employment described in section 302(c)(1)(A) of the Merchant Marine Act, 1936, as amended by subsection (a), occurring after the date of enactment of this Act.

- (iii) that is owned, chartered, or controlled by the United States and used by the United States for a war, armed conflict, national emergency, or maritime mobilization need (including for training purposes or testing for readiness and suitability for mission performance); and
- (B) during the period of that employment, possessed a valid license, certificate of registry, or merchant mariner's document issued under chapter 71 or chapter 73 (as applicable) of title 46, United States Code; and
- (2) if the Secretary makes affirmative determinations under paragraph (1) (A) and (B), certify that individual under this subsection.
- (d) For purposes of reemployment rights and benefits provided by this section, a certification under subsection (c) shall be considered to be the equivalent of a certificate referred to in paragraph (1) of section 4301(a) of title 38, United States Code.

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PROTECTION AGAINST DISCRIMINATION OF SEAMEN."

46 U.S.C. 2114 (2002). Protection of seamen against discrimination

(a)(1) A person may not discharge or in any manner discriminate against a seaman because—

(A) the seaman in good faith has reported or is about to report to the Coast Guard or other appropriate Federal agency or department that the seaman believes that a violation of a maritime safety law or regulation prescribed under that law or regulation has occurred; or

(B) the seaman has refused to perform duties ordered by the seaman's employer because the seaman has a reasonable apprehension or expectation that performing such duties would result in serious injury to the seaman, other seamen, or the public.

(2) The circumstances causing a seaman's apprehension of serious injury under paragraph (1)(B) must be of such a nature that a reasonable person, under similar circumstances, would conclude that there is a real danger of an injury or serious impairment of health resulting from the

¹¹ Section 428 of Public Law 107-295 (116 STAT. 2064, 2127), the Maritime Transportation Security Act of 2002, amended 46 U.S.C. 2114(a), to expand the protection of seamen against discrimination to prohibit anyone to discharge or discriminate against any seaman who reports a violation of a maritime law to the Coast Guard or refuses to perform duties which he believes would result in his or another individual's injury. 46 U.S.C. 2114 was not enacted as part of the Merchant Marine Act, 1936.

performance of duties as ordered by the seaman's employer.

(3) To qualify for protection against the seaman's employer under paragraph (1)(B), the employee must have sought from the employer, and been unable to obtain, correction of the unsafe condition.

(b) A seaman discharged or otherwise discriminated against in violation of this section may bring an action in an appropriate district court of the United States. In that action, the court may order any appropriate relief, including—

- (1) restraining violations of this section;
- (2) reinstatement to the seaman's former position with back pay;
- (3) an award of costs and reasonable attorney's fees to a prevailing plaintiff not exceeding \$ 1,000; and
- (4) an award of costs and reasonable attorney's fees to a prevailing employer not exceeding \$ 1,000 if the court finds that a complaint filed under this section is frivolous or has been brought in bad faith.